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CLERK

In The

Supreme Court of the United States

OCTOBER TERM, 1981

NATIONAL ASSOCIATION OF BROADCAST EMPLOYEES AND TECHNICIANS, AFL-CIO, et al,
Petitioners,

vs.

WJLA, INC.,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

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QUESTION PRESENTED

When an arbitration clause is only as broad as the collective bargaining agreement itself, but in one party's opinion the breadth of the agreement depends upon their "past practice" or "the common law of the shop," is a final resolution of the arbitrability issue for the judiciary or the arbitrator?

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NATIONAL ASSOCIATION OF BROADCAST EMPLOYEES AND TECHNICIANS, AFL-CIO, et al,

Petitioners,

vs.

WJLA, INC.,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

National Association of Broadcast Employees and Technicians, AFL-CIO, and its Local Union 31, hereby petition for Writ of Certiorari to the United States Court of Appeals for the District of Columbia, enabling this Court to review the judgment in WJLA, INC. v. NATIONAL ASSOCIATION OF BROADCAST EMPLOYEES AND TECHNICIANS, AFL-CIO and LOCAL 31 of the NATIONAL ASSOCIATION OF BROADCAST EMPLOYEES AND TECHNICIANS (C.A.D.C. No. 80-1305) (decided April 20, 1981).

OPINIONS BELOW

The opinion of the United States District Court for the District of Columbia is not officially reported, but is reprinted as App. A to this petition. The judgment of the District Court is reprinted as App. B. The judgment of the Court of Appeals, issued without opinion, is annexed as Appendix C.

JURISDICTION

The judgment of the United States Court of Appeals for the District of Columbia and its date of entry is April 20, 1981. This Court has jurisdiction pursuant to 28 U.S.C. §1254(1).

STATUTORY PROVISIONS INVOLVED

Section 203(d) of the Labor-Management Relations Act of 1947, 29 U.S.C. §173(d), provides in pertinent part:

> (d) Final adjustment by a method agreed upon by the parties is hereby declared to be the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective-bargaining agreement. The Service is directed to make its conciliation and mediation services available in the settlement of such grievance disputes only as a last resort and in exceptional cases.

Section 301(a) of the Labor-Management Relations Act of 1947, 29 U.S.C. §185(a), provides in pertinent part:

> Sec. 301 (a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

STATEMENT OF THE CASE

Respondent instituted this action for declaratory relief and to stay arbitration. The action was brought in the United States District Court for the District of Columbia under Section 301 of the Labor-Management Relations Act, 1947 (29 U.S.C. §185) and the Declaratory Judgment Act (28 U.S.C. §§2201, 2202). Respondent sought a determination and declaration of its rights under the collective bargaining agreement and, in particular, that it has no obligation to arbitrate this grievance.

The parties stipulated to the facts. Petitioner and respondent have a collective bargaining relationship and there is a broad arbitration clause (Section 9.40) in the contract which provides:

> In the event any dispute arises under this Agreement that is not resolved by the parties, it shall be resolved by arbitration.

Petitioner filed a grievance claiming a violation of the collective bargaining agreement. The dispute is centered around proceeds from optional life insurance policies which petitioner claims is a contractual responsibility of respondent.

Respondent and its former corporate parent participated in a group life insurance plan for many years. Effective 10/11/72, it withdrew from one plan and secured a group life insurance plan with another company (The Provident Life and Accident Insurance Company of Chattanooga, Tennessee). Under the old plan, employees were required to pay a portion of the premium; under this plan, no premiums were chargeable to the bargaining unit members. An optional life insurance policy also was available to supplement the new group life insurance. All employees were informed of this change in benefits by management. The premium for the optional policy could be paid for by payroll deductions.

One of petitioner's members and an employee of respondent, George Semyan, selected the optional coverage and requested

payment through payroll deductions. Semyan suffered a fatal heart attack. Petitioner gave timely notice to respondent of a claim under the policies. Respondent contacted Semyan's widow to obtain all necessary information, and then processed the claim. The full amount that was due under the group life insurance policy was paid to the widow; however, a dispute arose over the amount which was paid to her under the optional policy. Both checks were tendered to her by respondent and not by the carrier.

The check for the optional coverage was in the amount of $2,048.79, the cash value of that policy. But according to a memorandum issued to the employees by respondent, the optional plan guaranteed a death benefit to the surviving family of $14,000.00 plus accumulated contributions, or cash value, which ever is greater (App. E).

Petitioner filed a grievance (App. D). The contractual claim is a breach of Article IV of the contract (App. F) which gives express recognition to employee benefits, at least in general terms. Petitioner also maintained that respondent's participation in the administration of such insurance policies for much of the collective bargaining lifetime of the parties has raised a contractual obligation to pay according to the terms of the policy. This "past practice" under Article IV has become part and parcel of the collective bargaining agreement.

Additionally, petitioner contended in the courts below that insurance benefits, like unemployment insurance, accrued vacation and retirement benefits, and disability insurance, are part of the total wage structure.

Respondent filed this action and subsequently moved for summary judgment. The district court reviewed the collective bargaining agreement and the nature of the dispute. In petitioner's opinion it invaded the province of the arbitrator when it declared that respondent had no obligation to pay the life insurance proceeds left unpaid to Semyan's widow; that said

obligation was one of private contract between the carrier and the widow and is no part of the collective bargaining agreement (App. A). It found the insurance carrier is not a party to the parties' contract and, therefore, could not be a party to any arbitration. And since, "[t]he parties have not pointed to any provision of the Agreement relating to life insurance benefits," the court concluded the contract was not susceptible of any interpretation covering the dispute.

The district court granted respondent's motion for summary judgment and declared the grievance, "is not a proper subject for arbitration . . .," and enjoined petitioner from proceeding further with arbitration of the grievance (App. B).

Petitioner appealed to the United States Court of Appeals for the District of Columbia. The decision of the district court was affirmed without opinion (App. C).

REASONS FOR GRANTING THE WRIT

Summary

The role of the federal judiciary is unclear when the issue of arbitrability requires an extensive taking of proof as to "past practice" and "the common law of the shop." Should the court attempt a final resolution of arbitrability or leave that task to an arbitrator? Clarification of that role in light of federal labor policy under the Steelworkers' Trilogy is requested of this Court by granting this petition.

In the Steelworkers Trilogy, (Am. Mfg. Co.) 363 U.S. 564 (1960), the Court announced the, "very limited" role played by the federal judiciary in the face of a broad arbitration clause. *Id.*, at 567-568. In their contract this petitioner and respondent have bargained for an arbitrator's judgment on all disputes arising out of the agreement. The district court was constrained, therefore, to this "very limited" role.

Petitioner claimed a past practice between the parties in the administration and payment of life insurance benefits notwithstanding the contract makes no specific reference to *life* insurance proceeds.[1] This past practice supplements any literal interpretation of the contract. Our federal labor policy has embraced this concept with vigor. *Steelworkers Trilogy (Warrier and Gulf N. Co.)* 363 U.S. 574, 579-80 (1960).

Whether this past practice enlarges Article IV of the contract (App. A) or Section 6.10(b), or the general wage structure[2] provisions of Article V is a question of the meaning, interpretation and application of the contract. The issue of arbitrability becomes inextricable from substantive issues of contract interpretation which lie at the heart of the merits of the

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[1]The contract does refer to accident and *death* insurance in section 6.10(b) (App. A).

[2]*See Airline Pilots Ass'n, Int'l*, 67LA, 217, 225 (Ordman 1976).

grievance. In such cases, it is impossible for a court to determine arbitrability within the narrow confines assigned to it by the *Steelworkers Trilogy*. No court can state "with positive assurance" that the dispute is beyond the reach of the arbitration clause, *Warrier and Gulf N. Co.*, 363 U.S. at 582, because in such cases the arbitration clause itself is only as broad as the agreement, and yet the breadth of the agreement constitutes the grievance itself. In this situation the issue of arbitrability becomes one for the arbitrator and not the judiciary. This states quite clearly the issue for which review by this Court is sought.

Respondent sought a declaration of its rights under the collective bargaining agreement pursuant to 28 U.S.C. §2201; that declaration was achieved in the context of a motion for summary judgment under Fed. R. Civ. P. 56. Through this procedural device respondent successfully restricted the district court to a strict, literal reading of the contract. The district court either ignored the past practice issue or else resolved it against petitioner upon the summary judgment papers alone and without the evidentiary hearing that attends such a claim in arbitration proceedings. The first is unconscionable error; the second is a bold usurpation of arbitral functions since it is the arbitrator's judgment that the parties bargained for as to the meaning, interpretation and breadth of the contract.[3]

By the very nature of petitioner's claim the arbitrability issue required the court to investigate the merits of the grievance, "or determine whether there is particular language in the written instrument which will support the claim." *Am. Mfg. Co.*, 363 U.S. at 568. Under federal labor policy a district court may not do this, *id.*, but the court below nonetheless did: "The parties have not pointed to any provision of the Agreement relating to

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[3] "The ablest judge cannot be expected to bring the same experience and competence to bear upon the determination of a grievance, [as an arbitrator]." *Warrier and Gulf N. Co.*, 363 U.S. at 582.

life insurance benefits." (App. A). Without considering petitioner's claimed involvement of a past practice it concluded that, "the Agreement was clearly unsusceptible of an interpretation covering the asserted dispute" (App. A). The test of arbitrability in such cases is reduced to a literal reading of the contract.

This, however, directly conflicts with the federal labor policies of the *Trilogy*. No longer will these doubtful cases be resolved in favor of arbitrability, *Warrier and Gulf N. Co.* at 583; the party resisting arbitration need not satisfy its former burden of proof to supply, "the most forceful evidence of a purpose to exclude the claim from arbitration . . .," *id.*, at 585; and abandoned is the rule that, "the complete silence of an agreement on the issue sought to be arbitrated is not sufficient evidence to meet the rigorous standard set by the *Steelworkers Trilogy* for a finding of nonarbitrability." *Int'l Ass'n. of Machinists* v. *Howmet Corp.*, 466 F.2d 1249, 1252 (9th Cir. 1972).

There is raised, therefore, an important question of federal labor policy. When the merits of the dispute are intertwined with the parties' customs, past practices or the "common law of the shop," and because these are tools of interpretation which define the breadth of an agreement that requires an arbitrator to resolve disputes arising under it, is a final resolution of the arbitrability issue for the judiciary, or is it preserved for the one whose judgment the parties have bargained for — the arbitrator? Such disputes are not uncommon.

> [T]he question of arbitrability of custom disputes have sometimes been raised when the arbitration clause was limited to disputes concerning the interpretation or application of the 'agreement.' The question was answered in the affirmative in some cases, but not in others. Elkouri and Elkouri, *How Arbitration Works*, at p.405 & nn. 74-75 (3d Ed.) (BNA 1973).

The issue here is not how arbitrability will be answered in such cases, but by whom. This presents the important question of federal labor policy for which petitioner requests review by this court. In circumstances such as these, either the judiciary must abandon the very limited role established for it by the *Steelworkers Trilogy*, or leave a final determination of arbitrability for the arbitrator.

CONCLUSION

For these reasons, a Writ of Certiorari should issue to secure plenary review of the judgment below or, upon review of the petition and the briefs in support and in opposition thereto, the Court is requested to grant the petition, summarily reverse the judgment below, vacate the stay of arbitration and dismiss respondent-plaintiff's complaint.

Respectfully submitted,

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APPENDICES

APPENDIX A
Opinion of the District Court

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

WJLA, INC.

Plaintiff,

v.

NATIONAL ASSOCIATION OF BROADCAST EMPLOYEES AND TECHNICIANS, AFL-CIO, et al,

Defendants.

Civil Action No. 79-3132

MEMORANDUM OPINION

This case is before the Court on plaintiff's motion for summary judgment. Plaintiff WJLA, Inc. seeks a declaratory order declaring that it is not obligated under the terms of the governing collective bargaining agreement (Agreement) to arbitrate a grievance over payments of life insurance benefits. In addition, WJLA, Inc. seeks an injunction to enjoin defendants from proceeding with the arbitration of that grievance.

Plaintiff WJLA, Inc. (WJLA) is the licensee of station WJLA-TV, Washington, D.C., and is engaged principally in the business of television broadcasting. The defendants, National Association of Broadcast Employees and Technicians, AFL-CIO (NABET) and NABET-31, are the international labor union and local affiliates, respectively, representing the employees of the plaintiff.

On July 27, 1979, defendant NABET-31 (Union) filed a grievance report with WJLA alleging that Provident Life and Accident Insurance Company (Provident) failed to pay a guaranteed death benefit of $14,000 to the family of a deceased employee. The union claimed that the deceased's optional

insurance policy, which was funded by employee contributions, was a part of the "employee benefits plan", and demanded that WJLA pay the death benefit.

WJLA refused to arbitrate the grievance, maintaining that it was not liable for insurance benefit payments, and that the controversy was not a matter subject to arbitration under applicable provisions of the Agreement. This suit was then brought under Section 301 of the Labor Management Relations Act, 29 U.S.C. §185, and the Declaratory Judgments Act, 28 U.S.C. §§2201 and 2202, to prevent the union from pursuing arbitration.

The union's argument is that the Court may not be apprised of, let alone examine, the facts comprising the dispute, and that arbitrability is to be determined by the arbitrator.

The Court does not agree with this argument, because the "presumption" in the labor law favoring arbitration is not irrebuttable, nor is it open-ended, allowing grievances to be filed over disputes not within the parties' agreement to arbitrate. *See Atkinson v. Sinclair Refining Co.*, 370 U.S. 238, 241 (1962); THE DEVELOPING LABOR LAW 482 (C.J. Morris ed. 1971).

The union's grievance involves the alleged obligation of an insurance company (Provident), under a contract of insurance, to the beneficiary of a former employee of WJLA. Provident is not a party to the Agreement and cannot be made a party to any arbitration arising under the Agreement. Provident's obligation under its contract of insurance has no relationship to the Agreement.

The arbitration clause in the parties' Agreement, section 9.4, declares in relevant part: "In the event any dispute arises under this Agreement that is not resolved by the parties, it shall be

resolved by arbitration." The parties have not pointed to any provision of the Agreement relating to life insurance benefits.

Since the Agreement is clearly unsusceptible of an interpretation covering the asserted dispute, arbitration cannot be required, and WJLA's requested relief prohibiting it must be granted.

This opinion and order do not preclude any claim concerning payments under the life insurance policy against the insurer.

/s/ JUNE L. GREEN
U.S. District Judge

FILED
FEB 12 1980
JAMES E. DAVEY, Clerk

APPENDIX B
Judgment of the District Court

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

WJLA, INC.

Plaintiff,

v.

NATIONAL ASSOCIATION OF BROADCAST EMPLOYEES AND TECHNICIANS, AFL-CIO, et al,

Defendants.

Civil Action No. 79-3132

ORDER

Upon consideration of plaintiff's motion for summary judgment, defendants' opposition thereto, the entire record, and after oral argument, it is by the Court this 12th day of February 1980,

ORDERED that plaintiff is entitled to summary judgment as a matter of law; and it is further

ORDERED that Grievance No. WJ 79-14 is not a proper subject for arbitration under the collective bargaining agreement in effect between the parties, and accordingly WJLA is not obligated to arbitrate Grievance No. WJ 79-14; and it is further

ORDERED that National Association of Broadcast Employees and Technicians, AFL-CIO, National Association of Broadcast Employees and Technicians, Local 31, their officers, agents, servants, employees and attorneys, and all other persons in active concert or participation with them, are permanently

APPENDIX B
Judgment of the District Court

enjoined from proceeding with arbitration of Grievance No. WJ 79-14 (Proceeding No. 16 30 0170 79); and it is further

ORDERED that this matter is dismissed.

/s/ JUNE L. GREEN
U.S. District Judge

FILED
FEB 12 1980
JAMES F. DAVEY, Clerk

APPENDIX C
Judgment of the Court of Appeals

UNITED STATES COURT OF APPEALS
FOR THE
DISTRICT OF COLUMBIA CIRCUIT

No. 80-1305 **September Term, 1980**

WJLA, Inc.

v.

National Association of Broadcast Employees and Technicians, AFL-CIO, and National Association of Broadcast Employees and Technicians, Local 31,

Appellants

Appeal from the United States District Court for the District of Columbia

BEFORE SWYGERT, *ROBINSON and ROBB, *Circuit Judges*

JUDGMENT

This cause came on to be heard on the record on appeal from the United States District Court for the District of Columbia, and was argued by counsel. While the issues presented occasion no need for an opinion, they have been accorded full consideration by the Court. *See* Local Rule 13(c).

***Of the United States Court of Appeals for the Seventh Circuit, sitting by designation pursuant to 28 U.S.C. § 291(a) (1976).**

APPENDIX C
Judgment of the Court of Appeals

On consideration of the foregoing, It is ORDERED and ADJUDGED by this Court that the judgment of the District Court appealed from in this cause be and hereby is affirmed.

Per Curiam
For the Court

/s/ GEORGE A. FISHER
Clerk

Bills of costs must be filed within 14 days after entry of judgment. The Court looks with disfavor upon motions to file bills of costs out of time.

United States Court of Appeals
for the District of Columbia Circuit

FILED APR 20 1981
GEORGE A. FISHER
CLERK

APPENDIX D
Grievance Report

Grievance No. WJ 79-14

GRIEVANCE REPORT

Local Washington Local 31
Employer Evening Star Broadcasting Company
Time and Date of Grievance Unknown
Department Engineering
Location of Violation

Description of Grievance In1972, George Semyan purchased Group Permaplan Life Insurance through the Evening Star Broadcasting Company. The plan guaranteed a death benefit to his family of $14,000 plus his accumulated contributions or cash value, whichever is greater. The Insurance Company will only pay the cash value to the family. Since this is a part of the employee benefits plan, the Union demands that the Company pay the $14,000.00 to the Semyan Family.

SEE ATTACHMENT

Operations Supervisor Stan Pederson
Date of Steward's Submission July 27, 1979
Steward
Disposition
Signature LEROY C. SANDERS
Job Title President

Title PERMAPLAN INSURANCE
Disposition

Local President

ATTACH ALL PERTINENT INFORMATION TO THIS FORM

APPENDIX E

Exhibit B attached to Grievance Report

GROUP PERMAPLAN LIFE INSURANCE

(You Are Eligible After One Year Of Continuous Service)

Your Monthly Contribution To Permaplan	$ 23.94
At Age 65: Your Paid-Up Life	$ 6,090.00
Your Cash Value.....	$ 3,962.00

If You Should Die Before Age 65, Your Beneficiary Would Receive The Term Life Benefit Of ..... $ 14,000.00
Plus Your Accumulated Contributions Or
Cash Value, Whichever Is Greater.

If You Terminate Employment Before Age 65, You May Retain Permaplan At A Rate Based On Your Age When You Began Participation.

Benefits for your family

GEORGE SEMYAN THE EVENING

APPENDIX F
Collective Bargaining Agreement

AGREEMENT BETWEEN
The Evening Star Broadcasting Company
(WJLA-TV)
and
National Association of Broadcast
Employees and Technicians, AFL-CIO
OCTOBER 1, 1977
to
August 1, 1981

APPENDIX F
Collective Bargaining Agreement

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APPENDIX F
Collective Bargaining Agreement

AGREEMENT

This Agreement effective October 1, 1977 is between the National Association of Broadcast Employees and Technicians, AFL-CIO, (hereinafter called "The Union") and The Evening Star Broadcasting Company and/or its successors and assigns (hereinafter called "The Company"), which owns and/or operates station WJLA-TV.

NON-DISCRIMINATION

The Company and the Union recognize their respective responsibilities under laws and regulations relating to fair employment practices. The Company and the Union agree to continue the existing policy of non-discrimination on the basis of race, creed, color, sex, national origin or age. As used in this Agreement, and except as otherwise clearly required by their context, the masculine, feminine and neuter import one another.

ARTICLE I — BARGAINING UNIT:

Section 1.1

(a) The term "employee" as used in this Agreement applies to all employees of the Company, including chauffeur-mechanics, in the engineering department of the Company engaged in the operation and maintenance of technical equipment and equipment incidental thereto. Technical equipment for the purposes of this Agreement shall be defined as those facilities of the Company or operated by or for the Company used in all of the following: transmitting, converting, and/or conducting audio, video and radio frequencies for use in broadcasting, rebroadcasting, multiplex, rehearsal, audition, closed circuit, recording, and/or "on the air" playback. In the case of dispute, the meaning of the words "operation and

maintenance" as used herein shall be determined by consideration, among other things, of the past practice followed in the Company.

(1) By way of illustration but not in any limitation, the following are examples of technical equipment: all television equipment; field setup, studio lighting, field lighting, camera dollies; audio, audio and/or video recording and playback equipment; video camera, video control, field television, television maintenance, television projection and television transmitter; and all equipment attached or connected to any of the equipment herein described and including any new devices intended to perform in any way any of the above functions.

(2) The foregoing notwithstanding, employees other than those defined herein, may operate cueing devices such as teleprompters. All installation and maintenance work pertaining to such cueing devices shall be performed by employees as defined herein.

(b) (1) Any computer used to control the operation of technical equipment as defined in Section 1.1 (a), shall fall within such definition of technical equipment, and shall be referred to as a "process control computer". In the event that such computer is also used to perform sales, traffic, and/or accounting functions, or other non-technical functions not presently performed by employees, persons other than employees may operate (input and recall) terminals in performing such non-technical functions; provided, however:

(i) Such non-technical operations are performed on terminals located remote from technical operations areas, and

(ii) Such remote terminals shall not have the capability of input or recall of technical operations data.

(2) The Company may also utilize a "Master Computer" other than a process control computer to perform the non-technical functions referred to above. The data fed into the "Master Computer" by persons other than an employee for subsequent use in a process control computer cannot exceed the scope of the data presently contained in the daily program log. The Union's jurisdiction will extend to any "Master Computer" keyboard and/or other device used for input and recall when operated to feed data into or extract data from the "Master Computer" which will control technical equipment and/or perform technical functions. It is understood that only employees may perform technical operations (process control) functions in any computer under any circumstances.

(c) (1) The term "employee" as defined in Section 1.1 (a) above shall also apply to all employees of the Company engaged in the operation and maintenance of sound-on-film camera equipment when operated or used for a sound-on-film, single system or double system when synchronization by wire or wireless is provided between camera and recorder (not when operated as a silent film camera). For purposes of this Agreement, operation of sound-on-film equipment shall include lighting, transportation and setup; however, employees other than those defined in this Agreement may also perform duties related to the transportation and set up of lighting and other equipment.

(2) The jurisdiction of the Union does not cover or extend to film processing or editing, assisting in

operating the lens on sound-on-film cameras, operating silent motion picture cameras, or loading or unloading film magazines when not attached to the camera. Nevertheless, employees of the engineering department may be required to operate silent motion picture cameras.

(d) In addition to the foregoing, it is agreed that the jurisdiction of the Union is expressly applicable to the following: video tape editing, cutting, and splicing; audio tape editing, cutting and splicing; kinescope recording.

(e) The jurisdiction of the Union is expressly applicable to all work associated with front screen projection, rear screen projection and all other special effects projection. It is understood that an on-set guest may operate (start, stop or back up) an on-set motion picture film projector during unscripted unrehearsed programs or program segments where such guest is also narrating or describing the material being projected.

(f) The jurisdiction of the Union over physical equipment of the Company ends at the point where the signals leave the transmitter antenna towers. The Company may employ or contract with others for the purpose of installation and maintenance of towers, obstruction lights and antennas. No employee shall be required to climb towers or antenna structures.

Section 1.2

The Union represents and warrants, and it is the essence hereof, that it represents for collective bargaining purposes, a majority of the employees of the Company. The Company accepts and recognizes the Union as the exclusive bargaining agency of and for the employees of the Company as herein described, with reference to rates of pay, wages, hours of employment or other conditions of employment.

APPENDIX F
Collective Bargaining Agreement

ARTICLE II — UNION SECURITY AND SENIORITY

Section 2.1

(a) As a condition of employment all employees covered by this Agreement shall, thirty (30) days after the date of execution of this Agreement, or in the case of new employees thirty (30) days after the date of hiring, become members of the Union and remain members in good standing in the Union during the term of this Agreement. It is agreed and understood that all new employees shall be on a four (4) months' probationary period. In the case of employees hired in news engineering and news tape editing, the Union will agree to extend the probationary period of any such employee for an additional two (2) months upon request of the Company, providing the affected employee also agrees to such extension. During the probationary period, the Company may discharge said employees without previous notice. If not discharged within the probationary period, such new employees shall become permanent employees. The Union shall be notified of such discharge at the same time as the employees. However, such discharge shall not be subject to the provisions of Article IX of this Agreement.

(b) The Company agrees to discharge any employee who remains delinquent fifteen (15) days after receipt by the Company of a written notice from the Union that said employee has failed to tender the regular fees and dues uniformly required as a condition of acquiring and/or maintaining membership in the Union. The provisions of this paragraph are subject to such limitations as are imposed by the National Labor Relations Act as amended.

Section 2.2

(a) All new employees shall, as a condition of employment and continued employment, have or obtain an FCC radio-tele-

phone license of the class required for their assignments within twelve (12) months of their date of employment. Such a twelve month period may be extended at the discretion of the Company for six (6) month periods in individual cases, after notification and consultation with the Union.

(b) All existing employees, as a condition of continued employment, who have an FCC radio-telephone license shall maintain said license at the Company's expense. Such a requirement shall be subject ot renegotiation in the event the FCC substantially changes current renewal requirements so as to require re-examination.

(c) All present employees, who do not have an FCC radio-telephone license of the required class for their assignment, shall take the necessary examination at Company expense every six (6) months, until they procure said license, and shall thereafter maintain such license at Company expense.

Section 2.3

(a) Dismissals of permanent employees, for reason of reduction of personnel, seasonal inactivity, or similar cause, shall be in inverse order of seniority, and it is also agreed that the Company will not dismiss any permanent employee for reason of reduction of personnel, seasonal inactivity or similar cause, without first dismissing all vacation relief and probationary employees.

(b) The Company agrees to rehire former employees who have been employed by the Company for at least three (3) months and released by reason of a reduction in personnel or for seasonal inactivity or similar cause, at a salary commensurate with their length of service as employees at the time of dismissal, whenever vacancies occur, providing that during such absence the former employees have maintained a creditable standing in

the community and providing they are still physically and mentally able to perform their duties with the Company. The Company shall give the Union one week to notify former employees desiring to return to work to contact the Company for interview. Former employees shall have the right to refuse temporary employment without waiving rights in respect to permanent employment. The Company shall have no obligation under this paragraph except to the former employees, in order of seniority, who contact the Company for interview within one week following notice of vacancy to the Union.

(c) Section 2.3(b) and the limitation on the probationary period in Section 2.1(a) shall not apply to vacation relief employees. Vacation relief employees are defined as employees hired specifically for vacation relief between May 1 and January 16. If such employees are retained beyond January 16, they shall become permanent employees and accrue all rights as permanent employees retroactively to the date of hiring. Vacation relief employees shall accrue one (1) day paid sick leave for every completed two (2) months of employment, which shall not be paid for, except as used; and shall be eligible to participate in the medical and hospitalization insurance coverage provided for in Section 4.6 (excluding dependents or family coverage at Company expense).

Section 2.4

Both the Company and the Union will recognize any existing Federal law regarding the reemployment of men who left the Company to serve in the Armed Forces.

Section 2.5

If the Company desires to start a new employee at a rate higher than the wage scale herein provided, the seniority of the said

employee may be extended, but only for the purpose of wages. For purposes other than wages, the length of his service will determine his seniority.

Section 2.6

The Company agrees to give the Union notice in writing of any vacancies among the employees on the engineering staff. The Union will refer to the Company for interview those persons it considers eligible for employment in the engineering department.

Section 2.7

The Company will notify the Union in writing of the starting date and base pay of a new employee and of any change in an employee's base pay other than that required by this Agreement.

ARTICLE III — HOURS OF LABOR:

Section 3.1

For the purpose of this contract, the work week shall begin on Monday and end on Sunday. However, a tour of duty shall be credited to the day in which it starts.

Section 3.2

(a) The weekly wage scales herein provided for an employee are predicated upon forty (40) hours of labor during not more than five (5) days of each week. Each day shall consist of eight (8) working hours, including a one-half hour paid meal period. Should an employee be required to work in excess of eight (8) hours in any one (1) day, he shall be paid in cash at the rate of time-and-one-half (1-½) from the eighth (8th) hour through the

twelfth (12th) hour and at the double-time (2X) rate after twelve (12) hours in any one (1) day. Company will provide forty (40) hours or equivalent pay in each work week.

(b) If an employee has worked in excess of ten (10) consecutive days without having received at least one (1) day off, for all such days worked in excess of ten (10) and until such time as the employee has received a day off, he shall receive additional compensation at his straight-time rate of pay; provided, however, that if the employee is otherwise receiving at least time and one-half his straight-time rate of pay for any hours thereof by virtue of another provision of this Agreement, his additional compensation therefore under this Section 3.2 (b) shall be at one-half his straight-time rate of pay. The foregoing shall not be applicable in cases where an employee's schedule is changed at the request of the employee. It is not the intention of the Company to schedule an employee to work in excess of twelve (12) consecutive days unless such assignment is necessitated by unusual operating requirements.

Section 3.3

A tentative weekly work schedule shall be posted not later than noon twenty-one (21) days preceding the applicable work week. Posting of this tentative work schedule shall freeze an employee's days off for the applicable work week. The actual weekly work schedule shall be posted not later than noon of the Wednesday immediately preceding the applicable work week and may not vary more than a plus-or-minus three (3) hours in the starting time for an employee from the tentative schedule except upon payment of the penalty provided in Section 3.5 (b). This provision shall not be applicable to vacation relief employees for the first sixty (60) days of each employment.

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Section 3.4

At least twelve (12) hours shall elapse between the end of one tour of duty and the start of the next tour of duty. Should an employee be required to report for duty prior to the expiration of said twelve-hour period, he shall receive double his rate of pay for that day as compensation for each hour worked, within the twelve-hour period stated above. It is not the Company's intention to take excessive advantage of its right to invade the twelve-hour turnaround provision; further, it is the Company's intention consistent with operating needs, to take into consideration the Union's desire to avoid consecutive minimum turnaround periods.

Section 3.5

(a) Notice of daily schedule changes affecting starting time shall be given twelve (12) hours in advance of the originally scheduled starting time or the rescheduled starting time, whichever is earlier, but not later than 7:00 p.m. of the work day prior to the day in question, except where a lesser notice is required by reason of the illness of another employee. Daily schedule changes may be made with less than twelve (12) hours notice or later than 7:00 p.m. of the prior work day only by adding work time to the previously scheduled hours at overtime rates in accordance with Section 3.2 and upon payment of $25.00, as a penalty, to the employee involved.

(b) There shall be a $3.00 penalty for changes involving working hours contrary to that permitted under Section 3.3 in the tentative schedule, except in the case of schedule changes caused by the illness of another employee. There shall be a similar $3.00 penalty for changes involving working hours after the actual schedule has been posted in accordance with Section

3.3, except that such penalty shall not apply to schedule changes which are directly caused by the illness of another employee, but in no event shall illness beyond the second day be a reason for waiving such penalty, and further, except when a penalty has been paid under Section 3.5 (a).

(c) It shall be the employee's obligation to check the schedule upon reporting for work and leaving work, but it shall be the Company's obligation to notify the employee of changes made during or after the working day.

Section 3.6

(a) Employees shall receive two (2) regularly-scheduled consecutive days off in each seven (7) days. Sunday and Monday, if consecutive, shall be considered as two (2) days off for this purpose. If an employee is required to work on one of his days off, he shall be compensated at the rate of time and one-half (1½) for the first eight (8) hours, two (2) times for the next four (4) hours, and two and one-half (2½) times for all hours over twelve (12), with a minimum call of eight (8) hours. If an employee is required to work on both of his days off, he shall be compensated on the second day off at the rate of two (2) times for the first eight (8) hours, two and one-half (2½) times for the next four (4) hours, and three (3) times for all hours over twelve (12), with a minimum call of eight (8) hours.

(b) A day off shall consist of thirty-six (36) hours off consecutively, two (2) days off shall consist of sixty (60) hours consecutively, three (3) days off shall consist of eighty-four (84) hours consecutively, four (4) days off shall consist of one hundred eight (108) hours consecutively, etc. Assignments during any of the above turnaround periods shall be compensated for at double his rate of pay for that day. The turnaround premium provided for in this paragraph shall not apply

if it arises out of a change of schedule directly caused by the illness of another employee, but in no event shall illness beyond the second day be a reason for waiving such premium.

Section 3.7

Nothing in this Article is to be so construed as to prevent work by an employee on a scheduled day off providing that overtime rate of pay shall apply on such day off, and further providing that thirty-six (36) hours notice (prior to 12:01 a.m. of such day off) shall be given by the Company to an employee whenever he is required to work on such day off. In the event that less than thirty-six (36) hours notice is given under this Section and an employee is required to work on his day off, the sum of $10.00 additional shall be paid the said employee.

Section 3.8

(a) The first meal period of thirty (30) minutes shall not be scheduled earlier than the start of the employee's fourth (4th) hour of work and must be completed by the end of the sixth (6th) hour unless the employees affected agree to remain at work, in which event they shall receive a premium in addition to their compensation equal to their rate of pay for that day for each hour or fraction thereof after the sixth (6th) hour until such meal period is completed; provided however, that this premium shall not apply to individual employees or groups of employees who with their consent are assigned a regular meal period outside of the above hours. The consent and/or agreement from employees under this sub-section shall be given only through their Union representatives.

(b) In the event an employee remains on duty for more than nine (9) hours, he shall be entitled to a second meal period of thirty (30) minutes, between the ninth (9th) to eleventh (11th)

hour of work and thereafter additional thirty (30) minute meal periods shall be scheduled at the completion of every five (5) consecutive hours from the end of the prior meal period. If the second meal period is not taken, it will be assumed to have been scheduled commencing at the beginning of the tenth hour of duty for the purpose of calculating entitlement to subsequent meal periods. All such meal periods, after the first, shall be paid at the applicable rate of pay.

(c) During each work day in which an employee is entitled to more than one (1) meal period, the Company shall pay him $7.50 for each meal period after the first meal period to reimburse him for eating expenses, in addition to any overtime pay.

Section 3.9

(a) An employee other than an employee specified in 3.9 (b) who works more than two (2) hours between the hours of 12 midnight and 7 a.m. shall be paid a night-shift differential of ten percent (10%) of his actual pay for that tour.

(b) An employee who works more than four (4) hours between 12 o'clock midnight and 7 a.m. shall be paid a night-shift differential of fifteen percent (15%) of his actual pay for that tour.

Section 3.10

Any employee assigned to a shift involving more than four (4) hours between 12 o'clock midnight and 7 o'clock a.m. may request and shall be granted a tour of duty outside these limits for the week immediately preceding his vacation provided he makes the request in writing at least 30 days before commencement of his scheduled vacation.

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ARTICLE IV — VACATIONS, BENEFITS AND HOLIDAYS:

Section 4.1

(a) Vacations shall be scheduled on a year-round basis. Selections of vacation times shall be given to employees on the basis of bargaining unit seniority. The following vacation limitations shall be observed:

TELEVISION ENGINEERING

Week #1 to Memorial Day	No more than two (2) employees at same time.
Memorial Day to Labor Day	No more than eight (8) employees at same time.
Labor Day through Week #52	No more than six (6) employees at same time.

TELEVISION NEWS AND PUBLIC AFFAIRS

Week #1 to Memorial Day	No more than (1) employee at same time.
Memorial Day to Labor Day	No more than three (3) employees at same time.
Labor Day through Week #52	No more than one (1) employee at same time, but two (2) employees for the weeks of Christmas and New Year's Day.

NEWS TAPE EDITORS

Week #1 through Week #52	No more than (1) employee at same time.

(b) In the event the number of employees increases by more than twenty percent (20%) during any time of the Agreement, the Company agrees to negotiate with the Union for a new vacation allotment.

Section 4.2

A Vacation Committee of not more than five (5) employees selected by the employees is hereby established and recognized by the Company. The Committee shall resolve all vacation scheduling problems arising out of the application of Article IV. Vacation lists shall be posted by the Vacation Committee and completed by December 1st, and shall be submitted on that date to the Office of the Personnel Administrator or his designees for the vacation period beginning the first Monday in January of the following calendar year. In the event the Vacation Committee fails to comply with this time deadline, then in that event the Company shall have the discretion to make any changes in schedules that are necessitated by the late submission without penalty or prejudice of any nature, notwithstanding any other provision of this Agreement.

Section 4.3

Vacations shall be granted on the following basis:

(a) An employee engaged during the period January 1 to April 30 shall receive, during the calendar year in which he was employed, one (1) week vacation plus days off for all holidays worked during his period of employment.

(b) An employee engaged after April 30 shall receive days off for all holidays worked during his period of employment.

(c) An employee engaged prior to January 1 shall receive a vacation on the following basis:

YEARS OF SERVICE	VACATION ALLOWANCE WITH PAY
Less than 5 years	2 weeks
5 years or more	3 weeks
15 years or more	4 weeks
18 years or more	5 weeks
25 years or more	6 weeks

(d) Anniversary dates for the purpose of calculating service for vacation entitlement shall be in the case of each employee the date on which he was hired.

(e) The Company shall make a reasonable attempt to schedule days off consecutive with an employee's vacation period.

Section 4.4

(a) In lieu of the five (5) following holidays — Washington's Birthday, July Fourth, Labor Day, Veteran's Day, and Martin Luther King's Birthday — all employees shall receive one (1) additional week off with pay (i.e., five (5) consecutive work days, plus the regular two (2) days off for that week less one (1) day for each of such of the above listed holidays as may occur outside the term of his employment), such week to be added to the regular annual vacation period.

(b) If an employee is assigned to work on any of the following holidays, Christmas Day, Thanksgiving, or New Year's Day, he shall be paid double time for the hours worked and in addition shall receive a payback day or days to be scheduled within twelve (12) months, subject to the mutual convenience of

the Company and the employee. If an employee's regular day off occurs on any of these holidays, he shall receive a payback day or days to be scheduled as provided for in the previous sentence.

(c) Rosh Hashana and Yom Kippur may be substituted for Christmas and New Year's Day in the above paragraph at the employee's option, provided that such option is exercised promptly upon ratification of this Agreement.

Section 4.5

(a) During the term of this Agreement, the Company agrees to maintain the sick leave plan in effect on and after July 1, 1977. The Company further agrees to allow NABET to choose between this plan and any new sick leave plan which may be adopted during the term of this Agreement.

(b) An employee shall be compensated for all such accumulated and unused sick leave at retirement based on his then current straight-time daily rate of pay for each accumulated sick leave day, or the employee may elect to have an equivalent number of days off with full pay immediately prior to date of retirement.

(c) The Company will furnish to each employee on January 1 and July 1 of each year an accounting of his/her sick leave entitlement.

(d) Upon expiration of paid sick leave, the Company shall grant an additional leave of absence for sickness without pay for a period not exceeding six (6) months; provided, however, that as a condition thereof the Company may in its discretion require a physician's certificate as to the existence or continuance of such illness or disability. The employee concerned shall continue to accrue seniority for all purposes.

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Section 4.6

The Company will provide at its expense for qualified employees, including the employee's family and dependents, medical and hospital insurance coverage equivalent to or better than the coverage currently in effect; provided, however, such coverage shall not be changed during the term of this Agreement where the effect of any change would be to make any part of such coverage less liberal.

Section 4.7

The Company will reimburse employees for the actual tuition of job-related training courses upon successful competion thereof, provided enrollment in the course and the actual tuition thereof has been approved in advance by the Company.

Section 4.8

One (1) personal leave day per year shall be granted to employees subject to advance notice to the Company and subject to the mutual convenience of the Company and the employee.

ARTICLE V — WAGE SCALES:

Section 5.1

Minimum wages for employees under this Agreement shall be:

(a) Per Week:

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	10/77	10/78	10/79	10/80
Group I	$557.00	$585.00	$614.00	$648.00
Group II	529.00	555.00	583.00	616.00
Group III				
0-6 months	258.00	265.00	273.00	285.00
6 months—1 year	265.00	273.00	281.00	297.00
1—2 years	296.00	305.00	314.00	331.00
2—3 years	330.00	346.00	363.00	383.00
3—4 years	369.00	387.00	406.00	429.00
4—5 years	430.00	452.00	474.00	500.00
5 plus	492.00	516.00	542.00	572.00

(b) An employee with seniority of more than ten (10 years (ten years plus one day . . .) shall have his base pay rate increased as follows:

10 years, plus-Applicable base pay rate plus .5 (.5%) percent.

15 years, plus-Applicable base pay rate plus one (1%) percent.

20 years, plus-Applicable base pay rate plus two (2%) percent.

25 years, plus-Applicable base pay rate plus three (3%) percent.

30 years, plus-Applicable base pay rate plus four (4%) percent.

ARTICLE VI — WORKING RULES;

Section 6.1

All technical equipment shall be operated only by employees as defined in Section 1.1. Technical equipment referred to herein does not include field strength measuring equipment.

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Section 6.2

Employees shall be present and working at any origination within a fifty (50) mile radius of 4461 Connecticut Avenue, Northwest, Washington, D.C. Origination shall be defined as the point of first conversion from natural aural or visual (live) state, and any subsequent conversions, to electrical signals. Exceptions to the above originations are as follows:

(a) Commercial, public service, or promotional spot announcements disc-recorded, audio or video tape recorded, or sound-on-film spot announcements not in excess of three (3) minutes' duration not produced by the Company. This exception is not intended to apply to feeds for direct broadcast.

(b) Commercial or public service disc-recorded, sound-on-film, or audio video tape-recorded programs prepared by persons other than the Company or the network for the broadcast industry in general and not exclusively broadcast by the Company. This exception is not intended to apply to feeds for direct broadcast.

(c) Disc-recorded, sound-on-film, audio or video tape recorded program segments, not to exceed five (5) minutes, prepared and produced by non-broadcasters for the broadcast industry in general and not for exclusive broadcast by the Company. This exception is not intended to apply to feeds for direct broadcasts.

(d) WJLA News and Sports Reporters, other on-the-air talent regularly employed by the Company and news stringers may report news material by beeper phone. Such persons may also use a portable, battery operated audio recorder having only one (1) microphone input, having no more than a twelve (12) foot microphone

cable, weighing not more than twenty (20) pounds for stenographic note-taking purposes. Such recorder shall not be used for any other purpose, except that any material recorded of a spontaneous, unscheduled news occurrence, including on-the-spot interviews of those involved, may be used on the air. Any recording of a schedule or pre-planned event shall not be permitted under this paragraph. Further, any recording made hereunder may not be used in conjunction with any film or video tape other than file footage.

(e) The use of any recognized major network service. The Company agrees to originate pool pick-ups and network service when requested by any such network, provided an agreement between the Company and any such network exists covering such service.

(f) (1) Special events and sports programs originated by an independent production network. Such network shall consist of three (3) or more stations other than WJLA-TV and any such origination shall not be produced by the Company.

(2) If any such independent network production requires supplemental assistance, the Company will try to assure that such supplemental assistance is furnished by available employees of the Company.

(g) The Company may use any subscriber news service, but shall not use any such service to circumvent the use of employees where they would otherwise normally be assigned.

(h) Telephone conversations with respect to that portion of such conversations originating in the field.

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(i) News or Public Affairs events in which the Company is not able to have its own employees originate the coverage because of restrictions imposed by authorities controlling the event. Provided, however, that the pick-up is made by another network or broadcast station, and further provided that the Company is required to make every effort to insure that the employees hereunder will originate the first (1st) such pick-up and at least every fourth (4th) pick-up thereafter.

(j) When technical equipment at the point of origination does not require the presence of an employee covered by this Agreement in order to originate a program from such point, nothing in this Agreement shall require the presence of such an employee.

The foregoing shall not be construed to infringe on Union jurisdiction where work covered by the Agreement is required to be performed at remote locations, nor shall it preclude the Union from grieving as to whether work covered by the Agreement is or is not required in a specific remote pickup.

(k) Further exceptions to these provisions must be requested in writing by the Company and shall be granted in each case, if approved by the Union.

(l) In the event a Company film production requires post-production work using facilities beyond the scope of the technical facilities of WJLA-TV, the Company may use an outside non-broadcast facility to perform such work in order to complete the production, provided that in each case the Union is notified in advance.

(m) The Company may assign non-bargaining unit employees to input character generator data for Emergency Broadcast System captioning where, because of circumstances beyond the Company's control, no bargaining unit employee is available to be assigned.

(n) In the event the network service provided for in 6.2 (e) is not available because the local network line is being used for another purpose, the Company may request the network to provide for its use a video tape recording made off the network line, provided the program is recorded at the time WJLA would have recorded it, and further such recording is re-recorded at WJLA, when time permits, before being used by WJLA for any purpose.

(o) The Company may accept for broadcast as news inserts, 1) material broadcast by other television stations of breaking news events or, 2) other news insert material occurring outside the District of Columbia, Loudoun, Arlington, Alexandria, Fairfax, Montgomery, Charles, Prince William, and Prince Georges Counties:

(i) until employees can be assigned to a continuing news event, or

(ii) where due to the nature of the material it is not possible to assign employees to perform the work.

It is understood the foregoing shall be applicable only where such news material was not produced by the Company or made at the request of the Company, and the use of such news material does not exceed three (3) minutes per insert as broadcast by the Company.

(p) The Producer of a regularly scheduled Company newscast may operate a 3/4-inch video cassette playback device of the type generally available to consumers for home and/or office use, located outside technical areas, for the sole purpose of determining edit points on news material to be included in the newscast being produced by him. News material shown on a newscast as a result of screening hereunder may be shown on subsequent programs provided it is shown in exactly the same form as it originally appeared.

Section 6.3

In originations produced directly by or for the Company outside the jurisdictional area set forth in Section 6.2 hereof, which originations require the use of equipment that would be within the jurisdiction of the Union under this Agreement if the origination occurred within the aforesaid jurisdictional area, the Company agrees that it will not use regular employees of the Company who are not covered by this Agreement to operate said equipment.

Section 6.4

The Director of Engineering and Assistant Director of Engineering may operate technical equipment for the purpose of experimentation and assisting in making emergency repairs.

Section 6.5

In the event that the Company determines to upgrade and assign temporarily an employee to Group I or Group II, he shall be paid such a rate for not less than four (4) consecutive hours. In no event, however, is an employee to receive less than his

permanent wage scale if assigned temporarily to a group lower than his permanent status. For the term of this Agreement, at least three (3) employees shall be permanently assigned to Group I and four (4) employees shall be permanently assigned to Group II. The Company shall not schedule so as to circumvent the intent of this subsection. The permanent assignment of employees to Group I or Group II is solely at the Company's discretion.

Section 6.6

An adequate set-up and/or briefing period shall be allowed an employee on assignment to programs in progress or relief of a man on watch. A minimum of five (5) minutes shall be allowed for lunch period relief.

Section 6.7

An employee assigned to any transmitter when necessary to go beyond interlocks shall be accompanied by another employee, or in a case of non-scheduled maintenance or an emergency by a management representative as designated in Section 6.4, provided said management representative possesses a valid first class FCC radio-telephone license.

Section 6.8

During those periods when the TV transmitters are remotely controlled, there shall be no requirement for employees to be assigned to said transmitter site and/or sites, except as required by FCC rules and regulations. When any such transmitter is being operated in a manual manner, at least one (1) employee shall be present at that transmitter site, except as provided in Section 6.7 of the Agreement.

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Section 6.9

An employee shall not be unreasonably called at home on his time off for Company business by representatives of the Company.

Section 6.10

(a) No employee shall be required to perform work under unsafe, hazardous and/or dangerous working conditions.

(b) The Company shall provide and maintain during the term of this Agreement death and accident insurance policy benefits amounting in the aggregate to $100,000 per employee.

ARTICLE VII — GENERAL PROVISIONS:

Section 7.1

An employee who desires to leave the employ of the Company shall give two (2) weeks' notice to the Company.

Section 7.2

(a) The Company may discharge an employee for just cause. Prior to such discharge, the Company shall fully discuss the matter with the Local Union Committee, and if the Local Committee agrees to such discharge, it shall become effective upon payment of two (2) weeks' pay to the employee involved. In the event that the Local Committee does not agree to such discharge, the matter shall be certified within one (1) week to the International Office of the Union and representatives designated by the Company for resolution. If a solution between these parties is not reached within two (2) weeks from the date of the first notice to the Local Committee, such dispute shall then be certified to arbitration as set forth in Section 9.5. The

Arbitrator shall give his advice and decision within one (1) week from the date of certification to him. Should the discharge in dispute be decided to be proper, such discharge shall be finally effective upon the Company's giving two (2) weeks' pay to the employee involved.

(b) The foregoing is not intended to impair the right of the Company to impose temporary suspensions without pay for cause, subject to the provisions of Sections 9.3 through 9.7 of this Agreement, inclusive, or to suspend an employee without pay pending determination of his discharge under the procedure set forth in this Section.

Section 7.3

(a) When an employee's employment is terminated for any reason other than resignation or discharge for just cause he shall receive four (4) weeks' notice or four weeks' pay in lieu thereof (except in the case of vacation relief or probationary employees, in which event it shall be three (3) weeks' notice or two (2) weeks' pay in lieu thereof).

(b) In addition to notice or pay in lieu thereof, employees, except in the case of resignation or discharge for just cause, shall be entitled to severance pay in the event of reduction in force as follows:

(i) For employees with less than two (2) full years' seniority, except where attributable to a difference in programming, two (2) weeks' base salary.

(ii) For employees with less than three (3) years' seniority, one (1) weeks' base salary for each full year of seniority.

(iii) For employee with three (3) or more years' seniority, one (1) weeks' base salary for each full year of

seniority, but not to exceed twenty-six (26) weeks' base salary plus:

YEARS OF SENIORITY	AMOUNT OF SEVERANCE ALLOWANCE AS PERCENTAGE OF TOP SCALE GROUP 3 ANNUAL BASE RATE
3- 4 years	2%
4- 5 years	2.5%
5- 6 years	4%
6- 7 years	5%
7- 8 years	5.5%
8- 9 years	6.5%
9-10 years	7.5%
10-11 years	8%
11-12 years	10%
12-13 years	12%
13-14 years	14.5%
14-15 years	16.5%
15-16 years	18.5%
16-17 years	20.5%
17-18 years	22.5%
18-19 years	24.5%
19-20 years	26.5%
20 plus years	28.5%

(iv) Notwithstanding any limitation to the foregoing, employees with ten (10) or more years of service shall be entitled to supplemental severance pay provided in Section 7.3 (b) (iii) above in the case of a medical retirement or an early retirement with the Company's approval.

(c) Severance pay required by this section shall be paid either semi-monthly until exhausted or in a lump sum payment

at termination, at the option of the affected employee. The election of the lump sum option shall terminate any recall rights under this Agreement. Pay under the semi-monthly option shall terminate coincident upon an employee's recall, or offer and acceptance of reemployment in a different capacity in the Company, before its exhaustion. In the event of recall and subsequent layoff, an employee shall be entitled to the unexhausted portion of the severance pay herein provided plus any subsequently earned at the rate provided above.

Section 7.4

(a) In the event that the Company introduces or permits to be used any process, machinery, or device which substitutes for, supplements or replaces any present process, machinery, or device being operated as of the date of this contract by the employees or under the jurisdiction of the employees as set forth in Section 1.1, such process, machinery, equipment or device shall be operated and maintained only by employees herein set forth and the jurisdiction shall be the same as that set forth in Section 1.1; except that any process, machinery or device, which substitutes for, supplements or replaces any present process, machinery or device not covered by this Agreement or under the jurisdiction of employees of the Company covered by this Agreement shall not be within the jurisdiction set forth in Section 1.1. The foregoing provision is a general guideline concerning the introduction of any such new process, machinery or device. In the event any such new process, machinery or device is introduced, the Company and the Union shall negotiate its assignment and failing agreement either party may submit the determination to arbitration.

(b) The Company agrees that no regular employee on the rolls as of May 1, 1974 shall be laid off as a result of a reduction

in force resulting from any technological changes implemented subsequent to said date by WJLA-TV (formerly WMAL-TV), or as a result of changes in this Agreement from the prior one. The Company agrees to provide personal letters setting forth this guarantee to each employee on the rolls as of May 1, 1974 said letter to be construed as a third party beneficiary contract in favor of the employee which will survive the current and any future collective bargaining agreement. (Sample letter attached to contract.)

Section 7.5

The Company agrees that it will not transfer or subcontract any work or functions covered by this Agreement to which employees are entitled under the terms of this Agreement to any other employees of the Company not covered by this Agreement, or to any other Company or its employees.

Section 7.6

(a) So long as the Company continues to perform the obligations set forth in this Agreement, the Union agrees not to strike, picket, boycott the Company, or fail to perform the duties provided for.

(b) The Company will not assign, transfer, or require employees to go to any radio or television station, transmitter, studio or property to perform the duties of employees who are on strike, or to originate a program or programs especially for such station.

Section 7.7

The Company will not discriminate against any employee for anything said, written, or done in furtherance of the policies and aims of the Union.

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Collective Bargaining Agreement

Section 7.8

(a) During the course of contract negotiations the Company agrees to free three (3) employees, with pay, not to exceed eight (8) hours at straight time, for the duration of contract negotiations provided their names have been submitted one (1) week in advance of the start of negotiations, and that the release of these employees does not impair the technical operations of the Company.

(b) The Company will make every reasonable effort to schedule Union officers and duly designated committee members so that they may attend local Union meetings and meetings with the Company, provided no overtime or penalties are incurred.

Section 7.9

The Union is permitted to display the Union label on all equipment, tapes, etc., within the jurisdiction of the Union. Telecasting of the Union label, however, shall not be mandatory.

Section 7.10

The Company agrees to establish a safety committee and will include representatives of both the Company and the Union.

Section 7.11

An employee shall not be responsible for loss or damage of equipment assigned to him or in his custody provided he establishes that he exercised reasonable care, thereof.

APPENDIX F
Collective Bargaining Agreement

ARTICLE VIII — TRAVEL AND TRANSPORTATION:

Section 8.1

The Employer shall reimburse each employee for all reasonable traveling expenses when travel by such employee is required or authorized by the Employer. In the event any employee uses his own automobile for transportation in connection with his assigned duties, the Employer shall reimburse such employee at the rate of 20¢ per mile for such use, and in no event shall the employee receive less than $2.50 for any completed trip. The Employer shall have the right to determine the method of transportation except that an employee shall not be required to use his own automobile unless he consents thereto.

Section 8.2

When sent out of Washington, D.C., on an assignment requiring him to remain away overnight, an employee shall be credited with not less than one (1) eight (8) hour shift for each day he is away on such assignment. All time spent in traveling up to eight (8) hours in any one day, exclusive of the time from midnight to 8:00 a.m., when sleeping accommodations are furnished, shall be considered as time worked. All time spent driving a car shall be considered as time worked.

ARTICLE IX — ARBITRATION, CONTROVERSIES, AND DISPUTES:

Section 9.1

The Company agrees that, in the assignment of employees to positions, hereunder and in the delegation of duties to them, it will not overburden employees with work or assign more responsibilities to them than they can reasonably be expected to perform. In the event of any dispute involving the foregoing

provision, the same may be made the subject of grievance and arbitration under this Article. Notwithstanding anything contained in this Agreement, the Union shall not be precluded from establishing in any such grievance or arbitration that the assignment or delegation of duties in dispute constitutes overburdening or excessive responsibilities in violation of this Section.

Section 9.2

The Company shall not initiate any new operating practice or procedure which increases or makes more difficult the duties or job of an employee hereunder, unless not less than fifteen (15) days in advance thereof, the Company apprises the Union of same in writing and negotiates with the Union as to the methods and limitations thereon under which such new practice or procedure may be placed into effect.

Section 9.3

(a) It is the desire and intention of the parties to reach a mutually satisfactory solution of their common problems, and the parties hereby agree that they will consult and cooperate with each other in respect to any matter or question that may arise in connection with the matters covered by this Agreement and that controversies arising hereunder shall be promptly and amicably settled or disposed of by a meeting of representative minds of both parties.

(b) The Company agrees that the Director of Engineering shall meet once a month with designated Union representatives at the request of the Union.

Section 9.4

In the event any dispute arises under this Agreement that is not resolved by the parties, it shall be resolved by arbitration. The

facilities and personnel of the NABET Washington Local No. 31 and/or the NABET International Office shall be employed in settlement discussions prior to any arbitration proceedings.

Section 9.5

Either party may request arbitration by delivering a signed written notice to that effect directed to the other party and the party requesting such arbitration shall simultaneously request the American Arbitration Association to appoint an arbitrator in accordance with its rules.

Section 9.6

The arbitration hearings shall be conducted in accordance with the rules of the American Arbitration Association and the decision or award of the arbitrator shall be made within one (1) month after the close of the hearing. Such decision shall be binding on both parties and each party will promptly comply therewith. Each party will bear its own expense in carrying out these provisions and will share equally the expense of the arbitrator.

Section 9.7

In no event shall the arbitrator modify or amend the provisions of this Agreement, nor shall the same question or issue be the subject of arbitration more than once, except upon a showing of new evidence, change of conditions or circumstances.

ARTICLE X — PERIOD OF AGREEMENT

Section 10.1

This Agreement shall become effective as of October 1, 1977 and shall remain in force and effect until 12:01 a.m., August 1, 1981. It shall continue in effect from year to year thereafter

from the first day of August through the last day of July of each succeeding year unless terminated by either party stating their intent, in writing, at least sixty (60) days prior to the first day of August of each year.

NATIONAL ASSOCIATION OF
BROADCAST EMPLOYEES AND
TECHNICIANS, AFL-CIO

By: /s/ Roy W. Davis

ASSISTANT TO THE
INTERNATIONAL PRESIDENT

By: /s/ LeRoy C. Sanders

PRESIDENT NABET LOCAL #31

By: /s/ John E. Strong

NEGOTIATING COMMITTEE MEMBER

By: /s/ Francis D. Jenkins

NEGOTIATING COMMITTEE MEMBER

By: /s/ Charles F. Reed

NEGOTIATING COMMITTEE MEMBER

APPROVED:

By: /s/ Edward M. Lynch

INTERNATIONAL PRESIDENT

THE EVENING STAR BROADCASTING
COMPANY
(WJLA-TV)

By: /s/ Thomas B. Cookerly

EXECUTIVE VICE PRESIDENT
AND GENERAL MANAGER

Office-Supreme Court, U.S.
FILED
AUG 10 1981
ALEXANDER L. STEVAS,
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

No. 81-7

NATIONAL ASSOCIATION OF BROADCAST EMPLOYEES AND TECHNICIANS, AFL-CIO, *et al*,
Petitioners,

v.

WJLA, INC.,
Respondent.

REPLY TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

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QUESTION PRESENTED

Whether this Court should review a decision of a Court of Appeals upholding a finding of a Trial Court that a grievance is not arbitrable, where the collective bargaining agreement provides for arbitration only of disputes "arising under" the agreement and no provision in the agreement, express or implied, relates to the subject of the grievance.

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NATIONAL ASSOCIATION OF BROADCAST EMPLOYEES AND TECHNICIANS, AFL-CIO, *et al*,
Petitioners,

v.

WJLA, INC.,
Respondent.

REPLY TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

WJLA, Inc., hereby replies to the petition for Writ of Certiorari of National Association of Broadcast Employees and Technicians, AFL-CIO, *et al*, seeking review of a judgment of The United States Court of Appeals for The District of Columbia in *WJLA, Inc. v. National Association of Broadcast Employees and Technicians, AFL-CIO* and *Local 31 of the National Association of Broadcast Employees and Technicians, No. 80-1305* (D.C. Cir. April 20, 1981).

COUNTERSTATEMENT OF THE CASE

For a third time Respondent finds itself before a court contesting Petitioners' attempt to force arbitration of a grievance that is clearly beyond the scope of the arbitration clause in the collective bargaining agreement between the parties. Petitioners' demand to arbitrate the instant dispute is a guise for extracting $14,000 from Respondent, that Respondent has no

obligation to pay. Any dispute over benefits payable to the widow of a former employee pursuant to an optional insurance coverage contracted for by the deceased employee, is not subject to compulsory arbitration because it does not "arise under" the collective bargaining agreement ("Agreement").

In proceedings below before the District Court, Petitioners and Respondent entered into a stipulation governing all facts before the court. Among other things, the parties stipulated that no provision in the current Agreement, or in any previous agreement, relates directly or indirectly to life insurance benefits. The parties also stipulated that the insurance coverage in question has been maintained without change by Respondent at all times pertinent to this dispute. Nothing in the Agreement nor in the stipulation may be interpreted even to suggest that Respondent ever intended to guarantee the benefits provided under the optional insurance coverage at issue here.

Petitioner has failed to identify any obligation of Respondent subject to arbitration. The parties negotiated and agreed to the contract provision restricting arbitrable disputes to those "arising under" the Agreement. Since the Agreement is silent in the issue of life insurance benefits, the arising under prerequisite to arbitration has not been met. Nor does the record support any alleged theory that some "past practice" on the part of Respondent gave rise to an implied contractual obligation to guarantee such benefits.

Faced with a record devoid of support for their position, Petitioners seek to go beyond the stipulation signed and agreed to below—as they did before the Court of Appeals—by raising a new and specious argument based on section 6.10 of the Agreement, which relates to insurance coverage from the risk of accidental death or injury. Dispite admitting to the Court of Appeals that they failed to raise section 6.10 before the District Court, Petitioners seek once again to inject this unrelated contract provision into the case.

The District Court properly interpreted its role to determine whether the parties had agreed to submit this dispute to the arbitrator and, moreover, properly concluded that they had not. The Court of Appeals affirmed without opinion. These

decisions were consistent in all respects with the facts and the law. Petitioner has failed to assert any ground to justify further review by this Court of the decisions of the Courts below.

ARGUMENT

THE ARBITRABILITY OF A DISPUTE IS TO BE DETERMINED BY THE COURT UNLESS OTHERWISE SPECIFIED BY THE CONTRACTING PARTIES

The duty to arbitrate a labor dispute does not arise by operation of law; only if a party has contracted to submit his grievance to arbitration will he be required to do so. *Gateway Coal Co. v. United Mine Workers,* 414 U.S. 368, 374 (1974); *Atkinson v. Sinclair Refining Co.,* 370 U.S. 238, 241 (1962); *United Steel Workers v. Warrior Gulf Navigation Co.,* 363 U.S. 574, 582 (1960). As the Court stated in *Warrior & Gulf:*

> "Where the assertion by the claimant is that the parties excluded from court determination not merely the decision of the merits of the grievance but also the question of its arbitrability, vesting power to make both decisions in the arbitrator, the claimant must bear the burden of a clear demonstration of that purpose."

363 U.S. at 583, n. 7. Petitioners have failed to show that the parties—either by express agreement or by past practice—ever intended that an arbitrator should determine questions of arbitrability.

Perhaps in recognition of this failure, Petitioners have developed their own theory of the role of the judiciary in deciding questions of arbitrability, contending that a court must yield to an arbitrator on this issue when the arbitration clause "is only as broad as the collective bargaining agreement itself" and some alleged past practice of the employer may bear on the substance of the grievance. Petitioners further assert that a court may not interpret the contract by conducting evidentiary hearings, because such hearings are the sole province of the arbitrator.

Such a theory ignores the precedent of this Court. *United Steelworkers of America v. American Manufacturing Co.*, 363 U.S. 564, 571-72 (1960) (Brennan, J., concurring opinion.). If upheld, the theory would prevent courts ever from asserting jurisdiction over questions of arbitrability. In essence, these proposed judicial strictures commit any allegation of violation of a collective bargaining agreement to the authority of an arbitrator regardless of the scope of the mutually agreed upon arbitration clause. Such a theory obviously contradicts this Court's prior statement that ". . . the threshold question, the meaning of the arbitration clause itself, is for the judge unless the parties clearly state to the contrary." *Steelworkers, supra,* 363 U.S. at 571.

Despite Petitioners' allegations that questions of arbitrability and the substance of the dispute are inextricable, nothing in the record below nor in the petition to this Court satisfies the Court's clear demand for explicit proof that the parties have delegated questions of arbitrability to the arbitrator. Thus, the courts below did not err in considering and deciding the same questions in Respondents' favor.

THE GRIEVANCE AT ISSUE DID NOT ARISE UNDER THE COLLECTIVE BARGAINING AGREEMENT AND, THEREFORE, CANNOT BE SUBJECT TO ARBITRATION

The grievance at issue asserts that Respondent must pay $14,000 to the beneficiaries of a deceased employee who was a member of Petitioners' local union. The alleged basis for the grievance is a contract of insurance between a deceased employee and an insurance company (which is not a party to the collective bargaining agreement). The parties stipulated that neither the present Agreement nor any previous agreements between the parties contained any provisions referring, directly or indirectly, to life insurance benefits. The premiums for the life insurance in question were paid by the employee to the insurer through payroll deductions. When the insurance company declined to pay an amount to the deceased's beneficiary that Petitioners apparently believed was owing under the optional policy, Petitioners demanded a like amount from the company.

Disputes over payment of insurance benefits are subject to arbitration only when a bona fide argument can be made that the controversy involves a substantial issue of the employer's contractual obligations to provide insurance that necessitates interpretation of the contract. *Louisville Cooperage Co.*, 63 Lab. Arb. 165, 168 (1974) (Volz, Arb.). *See also Dravo Corp.*, 67 Lab. Arb. 264, 266 (1976) (LeWinter, Arb.); *Stewart-Warner Corp.*, 54 Lab. Arb. 951 (1970) (Larkin, Arb.). Since the parties have stipulated that the Agreement is silent on the question of life insurance, unquestionably the Agreement on its face does not encompass the grievance.

Nor can any suggested obligation arising from Respondent's past practice sufficiently broaden or supplement the Agreement to include this grievance. There has been no allegation of any change or failure to provide insurance coverage. Petitioners question only payment of benefits claimed under the optional insurance policy between a former employee and the insurer. As the parties stipulated, Respondent has continued to provide both group term life insurance and the option to elect to purchase additional coverage from the insurer. Thereby, Respondent has fulfilled any implied obligation it may have by virtue of past practice.

Moreover, the record contains no evidence of any past practice that satisfies the rigorous criteria of *Airline Pilots Association, International,* 67 Lab. Arb. 217 (1976) (Ordman, Arb.): "[P]ast practice can be deemed binding absent specific contractual language, where it is unequivocal, clearly enunciated and acted upon, and readily ascertainable over a reasonable period of time as fixed and established practice accepted by both parties." *Id.* at 222. The courts below recognized that Petitioners' past practice argument met none of these standards. On petition to this Court, Petitioners have failed to assert any further argument warranting a contrary conclusion.

THE PETITION FOR WRIT OF CERTIORARI FAILS TO SATISFY THE STANDARDS SET FORTH IN RULE 17 OF THIS COURT

In rejecting Petitioners' argument below that arbitrability must be determined by the arbitrator, the District Court stated:

> "The court does not agree with this argument because the 'presumption' in the labor law favoring arbitration is not irrebuttable, nor is it open ended, allowing grievances to be filed over disputes not within the parties' agreement to arbitrate. *See Atkinson v. Sinclair Refining Co.*, 370 U.S. 238, 241 (1962); THE DEVELOPING LABOR LAW 482 (C.J. Morris ed. 1971)."

WJLA, Inc. v. National Association of Broadcast Employees and Technicians, AFL-CIO, et al, No. 79-3132 (D.D.C. Feb. 12, 1980). Petitioners have failed to show that the District Court, or the Court of Appeals in upholding the District Court, either decided an important question of federal law that has not been but should be settled by this Court, or decided a federal question in a way that conflicts with applicable decisions of this court. To the contrary, as Respondent has shown, the position urged by Petitioners, if adopted, would be contrary to long-standing precedent placing determinations of arbitrability squarely within the jurisdiction of the courts.

CONCLUSION

For the foregoing reasons, the petition for Writ of Certiorari should be denied.

Respectfully submitted,

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